

APPEAL NO. 950273

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 11, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant's injury of (date of injury), to his right shoulder did not include injury to his back, that he did not have disability after October 7, 1994, and that issues of maximum medical improvement (MMI) and impairment rating (IR) are not ripe for determination since no designated doctor has been appointed. Claimant contests on appeal only "the decision of my date of MMI . . ." saying that he has not reached MMI. Respondent (carrier) replies that the appeal is untimely and that the appeal does not address any determination made by the hearing officer.

DECISION

We affirm.

The appeal of claimant was timely filed. The decision of the hearing officer was distributed on February 1, 1995. Section 410.202 gives a party 15 days to appeal from the time of receipt of the decision of the hearing officer, and Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 102.5 (Rule 102.5) allows five days for mailing, so the claimant is deemed to have received the decision on February 6, 1995. Fifteen days from February 6th is February 21, 1995. Claimant's appeal was mailed on February 20, 1995, and was received on February 24, 1995, so it is timely. See Rule 143.3.

The carrier is correct in its description of the appeal, however. Claimant does not assert any error in regard to disability or in regard to the limited extent of his injury. He only states that the decision as to date of MMI is contested saying that his doctor and he do not agree that MMI has been reached. The hearing officer did not decide that MMI had been reached. He specifically found that a decision as to MMI and IR was not ripe because no designated doctor had been appointed. When a designated doctor is appointed and he examines claimant, he may or may not advise that claimant has reached MMI; the Texas Workers' Compensation Commission then may or may not give that opinion presumptive weight in deciding whether MMI has been reached.

With the appeal not disputing any determination of the hearing officer, the decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge